

Internal Revenue Service  
District Director

Department of the Treasury  
P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:

Employer Identification Number:

Date: MAY 06 1997

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the Office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.



[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b) (2) of the Internal Revenue code provides in part that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

*C. Ashley Bullard*

C. Ashley Bullard  
District Director

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Enclosures 3



The information you submitted indicates that [REDACTED] was formed on [REDACTED] in [REDACTED] as an unincorporated association.

Your organizing document, your By Laws, states that the general purposes for which the Association was organized are:

1.01..."the promotion of the sport of soccer and of soccer refereeing."

They further state that the specific purpose of [REDACTED] shall be:

- a. To promote the training and qualification of referees to the United States Soccer Federation (USSF) grades.
- b. To arrange for the administering of USSF testing of referees.
- c. To provide information on refereeing and names of available referees to the soccer leagues in the area covered by CSRA.
- d. To arrange referee scheduling services as required by soccer leagues in the area.
- e. To provide a means for members to improve the quality of soccer refereeing.

Your application states that membership in your organization is open to all qualified referees and those who desire to become qualified referees. The regular annual dues are \$15.00. Those who officiate at high school games pay an additional \$30.00. Members may also pay "assessment fees." This fee is charged to the referee for on-field performance assessments necessary for referee certification.

You provide training in soccer refereeing to members of your organization and non-members alike through offering basic, advanced and update courses for new and experienced soccer referees. You also offer training sessions once a month on specific aspects of soccer refereeing.

You perform functions that further the objectives of the Washington State Soccer Association and the United States Soccer Federation of Colorado Springs, such as administering written and physical endurance tests and collecting administrative fees for referee certification.

You also provide soccer referee services to high school and adult amateur soccer leagues. The fees paid to your organization for referee services at adult amateur and high school soccer matches are the result of contracts to provide refereeing that you have entered into with local adult amateur leagues and school districts.



Under the contracts to provide referee services your organization assigns referees and receives an "assigning fee" for this service. You are responsible for providing referee services, billing the league or school, making payment to the referee for his or her services and for issuing appropriate tax information so that the referee can report this income properly on his or her tax returns.

In your letter of [REDACTED], you state that in the past referees were paid directly by the schools or the amateur sports organizations that sponsored soccer competition in your area. You state that this practice was discontinued at the request of the local school districts after the IRS determined that these referees should be issued Forms W-2 through the school's payroll system.

The schools, wishing to avoid this additional bookkeeping, then instituted the policy of hiring the referee's association as an independent contractor, thereby placing the burden of administering and reporting these payments on the referee's association.

You also state that not all of the referees you train remain with your organization or work under these contracts. In your letter of [REDACTED] you estimate that approximately [REDACTED] percent of the total number of referees you train each year officiate at youth soccer games as independent contractors in their own right. In your letter of [REDACTED] you state that due to the high demand for soccer referees you do not limit these high school and adult amateur assignments to your members, but that you assign qualified referees from outside your organization as the need arises.

These contract fees are your largest source of revenue totaling an estimated \$[REDACTED] or [REDACTED] percent of your estimated revenue for the years [REDACTED] through [REDACTED]. The balance of your revenue is derived from member dues, estimated to total \$[REDACTED] for the years [REDACTED] through [REDACTED], plus some incidental investment income.

The largest single expense listed in your application are the fees you pay to referees for officiating at adult or high school games. These expenses total an estimated \$[REDACTED] or approximately [REDACTED] percent of your total expenses for the years [REDACTED] through [REDACTED] per your Form 1023. The balance of your expenses were for registration and assigning fees paid to [REDACTED] (the sanctioning body for High School Athletics in [REDACTED]), clinic expenses and general administration.



While none of your board members receives compensation for their duties as board members, all received fees disbursed by your organization for referee services.

Section 501(c)(3) of the Internal Revenue Code of 1986 recognizes corporations organized and operated for educational purposes as exempt from income tax. The same section of the Code also recognizes certain organizations devoted to fostering national amateur athletic competition as exempt from income tax. However, in either case exemption cannot be granted if any part of the earnings of the organization inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1 of the Income Tax Regulations defines the organizational and operational tests for exemption from income tax. Section 1.501(c)(3)-1(a)(1) states, "In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one of the purposes specified in the section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

Section 1.501(c)(3)-1(c)(2) states, "An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals."

The term "private shareholder or individuals" is defined in paragraph (c) of section 1.501(a)-1 as "persons having a personal and private interest in the activities of the organization."

Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated exclusively for one or more exempt purpose unless it serves a public rather than private interest.

In general the presence of a single non-exempt purpose, if substantial in nature, will preclude tax-exempt status regardless of the number or importance of truly exempt purposes. Better Business Bureau v. U.S., 326 U.S. 279, 283 (1945). A non-exempt activity will not result in denial of exemption where it is only incidental and less than substantial in nature, Seasongood v. Commissioner, 227 F.2d 907, 910 (6th Cir. 1955). A slight and comparatively unimportant deviation from the approved rule is not fatal. The IRS position on this subject is that all the resources of the organization, other than an insubstantial part, must be applied in pursuit for the exempt purpose. This position is clarified in Revenue Ruling 77-366, 1977-2 C.B. 192.

Revenue Ruling 61-170, 1961-1 C.B. 112 describes a nurses' registry that sought exemption under section 501(c)(3). The organization maintained a registry of qualified registered and practical nurses and assigned



[REDACTED]

nurses on a rotating basis in response to public requests for nursing services. The board was made up of professional nurses and membership was open to nurses who maintained their professional skills and adhered to the organization's ethical standards. The board was uncompensated and income was derived from membership dues, fees and assessments. No part of the net earnings of the organization inured to any individual. The Service, in denying exemption to this organization, held that the organization failed to meet the organization and operational test for section 501(c)(3) because it was not free from substantial private interests in that it functioned as an employment service for the benefit of its members.

Revenue Ruling 61-170 pointed out the distinction between the nurses' registry described in that case and the community nursing bureau described in Revenue Ruling 55-656, 1955-2 C.B. 262. The nursing bureau described in that revenue ruling was controlled by a community board that was drawn from public health and welfare organizations and the community at large. The organization was supported primarily by contributions from individuals and community organizations in order to assure a supply of nursing personnel for hospitals, health agencies, doctors and individuals.

Your letter of [REDACTED], states that you feel you are furthering an exempt purpose similar to the organizations described in Revenue Ruling 58-194, 1958-1 C.B. 240 and Revenue Ruling 63-235, 1963-2 C.B. 210. Your position is that your organization is merely a conduit for the payments received from school districts which are the main support of your organization. You also believe that your organization's administrative independence (in that the schools cannot determine which referees will be assigned to which games) makes for greater integrity in the refereeing function.

Your letter of [REDACTED] also sites the case of Big Mama Rag Inc. v. U.S., 631 F.2d 1030 (D.C. Cir 1980). In this case, a federal court of appeals found portions of the regulations regarding the definition of "educational" as unconstitutionally vague. In this case however, the issue in questions was whether the editorial content of a publication which sought exemption under section 501(c)(3) was "educational" or was merely unsubstantiated opinion.

In your case however, the issue is not the educational content of the training classes you conduct. The question is whether your organization is operated in a way that meets the requirements of the operational test for section 501(c)(3).

Revenue Ruling 58-194 describes an organization that ran a book, campus supply and cafeteria operation at a store on the campus of a state university. The activities of this organization were carried on in buildings owned by the state on the university campus. The board of

[REDACTED]



directors was composed of the university president, three faculty members and three student representatives elected from the membership. All regular employees of the university were members of the corporation. Students paid a nominal fee for membership in the organization. None of the profits or assets of the corporation could be distributed to members but were to be used solely for the benefit of the students and faculty. The Service recognized this organization as exempt because it existed primarily for the convenience of the students and faculty and therefore was, for all intents and purposes, a part of the university.

The organization described in Revenue Ruling 63-235 published a law journal at a university law school in order to foster legal scholarship and research. Articles were written or edited by unpaid law students and the board of directors was composed of members of the law school faculty and administration who were also uncompensated. The income of the organization was derived from subscription sales, single copy sales and grants from the university. In this case the Service determined that this organization was an adjunct to the law school intended to give law students experience in legal research, writing and editing. The publication and sale of the journal was found to be incidental to this educational purpose.

Your organization, although it performs certain educational functions (the training of soccer referees) is not an integral part of a school or university such as the organization described in Revenue Ruling 58-194. Control of your organization is entirely outside of the control of any of the schools you serve. In addition, the revenue of the organization described in Revenue Ruling 58-194 was not passed on to the membership of that organization, while a substantial portion of your revenue is passed on to member referees as fees for refereeing games.

You are also unlike the organization described in Revenue Ruling 63-235 in that your organization makes distributions to its members while the staff of the organization described in Revenue Ruling 63-235 was uncompensated. It is our contention that the presence of fees paid to members fees places you outside the bounds of Revenue Ruling 63-235.

Your letter also refers to the ability of an exempt organization to carry on a trade or business. However, in such cases, the organizational and operational tests for section 501(c)(3) status still apply.

Finally, your fax of approximately [REDACTED] refers to the legislation which granted exemption under section 501(c)(6) of the Code to professional football leagues. You have not requested that we determine whether you qualify for exemption under section 501(c)(6). However, we do not believe that you meet the requirements of section 501(c)(6).



ENCLOSURE ONE

[REDACTED]

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We hold that because the fees your organization disburses, primarily to your members, constitute approximately [REDACTED] percent of your organization's total expenses, these fees cannot be considered inconsequential or merely incidental to your exempt activities. We further hold that the presence of these fees and your method of operation means you are more like the organization described in Revenue Ruling 61-170, than the organizations described in Revenue Rulings 55-656, 58-194 or 63-235. Therefore, exemption from income tax as an organization described in section 501(c)(3) is denied because you do not meet the organizational and operational tests.